

PT 96-27
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

ELGIN KNIGHTS OF COLUMBUS)	
HOME ASSOCIATION)	
Applicant)	
)	Docket # 93-45-75
v.)	
)	Parcel Index #06-13-302-012
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Theodore N. Schnell, Jr. appeared on behalf of Elgin Knights of Columbus Home Association.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on January 10, 1996, to determine whether or not Kane County Parcel No. 06-13-302-012 and the building thereon should be exempt from real estate tax for the 1993 assessment year.

Mr. Frank Orfie, President of the Elgin Knights of Columbus Home Association (hereinafter referred to as the "Applicant") and Mr. Robert Meek, Grand Knight of Elgin Knights of Columbus Council 654, (hereinafter referred to as the "Council"), were present and testified at the hearing on behalf of the applicant.

The issues in this matter include first, whether the applicant owned the parcel here in issue during all or part of the 1993 assessment year. The second issue is whether the applicant is a charitable organization. The third issue is whether the Council is a charitable organization. The final issue is whether this parcel and the building thereon were used primarily for charitable purposes

during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the period March 18, 1993 through December 31, 1993. It is also determined that the applicant is not a charitable organization. In addition, it is determined that the Council is not a charitable organization. Finally it is determined that this parcel and the building thereon were not used for primarily charitable purposes during the 1993 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel herein issue did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On November 9, 1993, the Kane County Board of Review transmitted an Application for Property Tax Exemption To Board of Review concerning this parcel for the 1993 assessment year to the Department. (Dept. Ex. No. 1)

3. On January 26, 1995, the Department notified the applicant that it was denying the exemption of this parcel for the 1993 assessment year. (Dept. Ex. No. 2)

4. By a letter dated February 1, 1995, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on January 10, 1996, was held pursuant to that request.

6. The applicant was incorporated on February 7, 1924, for the following purposes:

Social organization not for pecuniary profit. (Dept. Ex. No. 1S)

7. On April 25, 1995, which was after the assessment year here in issue, the applicant amended the purpose clause of its Articles of Incorporation as follows:

The Elgin Knights of Columbus Home Association is organized for the Religious Purpose of providing a place for worship and the Social Purpose of providing a place of meeting for the Elgin Knights of Columbus Council #654. The Corporation shall not engage in any activity, other than that of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to the Elgin Knights of Columbus Council #654, which is exempt under Section 501 (a) of the Internal Revenue Code. (Appl. Ex. No. 5)

8. The applicant acquired this parcel by a warranty deed dated March 18, 1993. (Dept. Ex. No. 1A)

9. During the period March 18, 1993, through December 31, 1993, the area identified as the activity room on the lower level floor plan of the building on this parcel (Dept. Ex. No. 1T) was leased to Y's Buys for \$250.00 per month. Y's Buys was a thrift store, which was operated by the Elgin YWCA. (Tr. pp. 12-14)

10. Y's Buys was open to the public 6 days a week during that period and occupied a substantial portion of the lower level of the building on this parcel. (Tr. p. 21)

11. During 1993, Y's Buys was engaged in the activity of reselling donated clothing to members of the public with the net proceeds going to the YWCA. (Tr. pp. 12 & 13)

12. During the period October 1, 1993, through December 31, 1993, the New Beginnings Church rented the council meeting room on the upper level of the building on this parcel for \$200.00 a month. (Dept. Ex. No. 1U) This church occupied the council meeting room on Sunday mornings for religious services and Thursday evenings for choir practice. (Tr. p. 15) The council meeting room is a substantial portion of the upper level of the building on this parcel.

13. During the period March 18, 1993, through December 31, 1993, the Council used the building on this parcel once a month for membership meetings. The applicant also used the building for a monthly business meeting. (Tr. p. 16)

14. The upper level of the building on this parcel contains both the Council meeting room and a small meeting room. During the period March 18,

1993, through December 31, 1993, the Council and the applicant held their monthly meetings in the council meeting room and the officers meetings for each organization were held in the small meeting room. (Dept. Ex. No. 1U)

15. In addition to the regularly scheduled monthly meetings of the applicant and the Council, the Council uses the building on this parcel for various social activities, including the Thanksgiving dinner for members and their families and the initiation dinner following the Council's initiation. (Tr. p. 27)

16. The Council consists of the first, second and third degrees. Each of these three degrees involves a ritual and an initiation. (Tr. pp. 37-41) To be eligible for the first degree, an initiation fee is required. Three are also annual dues which a man must pay to maintain his membership in the Council. No evidence was offered that the initiation fee or annual dues were ever waived or reduced in cases of need.

17. The applicant, on May 8, 1995, which was after the assessment year here in issue, was determined by the Internal Revenue Service to qualify for exemption from federal income tax pursuant to Section 501(c)(2). (Dept. Ex. No. 1Q)

18. The Council submitted a copy of a letter from the Internal Revenue Service dated May 4, 1977, to exempt the Knights of Columbus, Supreme Council, and its affiliates from federal income tax pursuant to Internal Revenue Code Section 501(c)(3). (Appl. Ex. No. 4)

19. The Council sells raffle tickets for the Springfield Knights of Columbus Council, which operates a car raffle. The Council sells a book of raffle tickets for \$15.00, keeps \$10.00 and sends \$5.00 to the Springfield Council. (Tr. pp. 28 & 29)

20. The Council also every October sells Tootsie Rolls. The Tootsie Roll drive is sponsored and administered by the Illinois State Council. All funds collected in this drive are sent to the Illinois Council. The Illinois Council

allows the Council to designate what organizations for the mentally handicapped receive up to 90 percent of the funds the Council collected. (Tr. pp. 30 & 31)

21. The applicant submitted a 1993 statement of income and expenses indicating that the applicant received rental income totaling \$2,225.00 and also interest of \$443.73. (Dept. Ex. No. 1V)

22. During 1993, the Council reported income including: dues totaling \$2,339.50; Knightline bulletin advertising of \$800.00; raffle income of \$5,489.25; Tootsie Roll sales income of \$11566.76; miscellaneous income, which included building rental of \$2,503.33; and garage sale income of \$937.25.

23. Based on the foregoing, I find that the applicant owned the parcel here in issue and the building thereon during the period March 18, 1993, through December 31, 1993.

24. During that period I find that the applicant leased portions of that building for profit and also the Council used the building for its fraternal and social purposes.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 205/19.7 exempts certain property from taxation, in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....For purposes of this Section, beginning with assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income derived therefrom is used exclusively to support the charitable, religious or

beneficent activities of the owner whether or not such activities occur on the premises of such property.

Property used by a charitable organization otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held by an entity which is organized solely to hold that title and which qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The Illinois Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provision in force, at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922).

While both the applicant and the Council are exempt from federal income tax, the applicant pursuant to Section 501(c)(2) of the Internal Revenue Code and the Council pursuant to Section 501(c)(3) of that code, the Illinois Courts have held that exemption from Federal income tax and from State sales and use tax is not determinative of whether the subject property is used for charitable purposes. In re Application of Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2nd Dist. 1980); and also People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

During the period March 18, 1993, through December 31, 1993, the applicant used a substantial portion of the lower level of this building by leasing it for profit to Y's Buys, six days a week. During a portion of that same period, the

applicant leased for profit a substantial portion of the upper level of that building to New Beginnings Church on Sunday mornings and also on Thursday evenings. Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

The Council, I have previously found, is primarily a social and fraternal organization which used the building on the parcel here in issue for primarily social and fraternal purposes. In the case of People ex rel. Thompson v. The Dixon Masonic Building Association, 348 Ill. 593 (1932), the Illinois Supreme Court in considering an exemption for a building owned by a social and fraternal organization determined at page 596 as follows:

...but a building used primarily for social or fraternal purposes or for lodge meetings for the conduct of ritualistic work is not exempt from taxation.

See also The People ex rel. Nelson v. The Rockford Masonic Temple Building Association, 348 Ill. 567 (1932).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or share holders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the

primary use of the property is for charitable purposes. Since the Council failed to establish that it waived initiation fees and dues in cases of need, I conclude that the Council failed to establish that it met guidelines (1), (4), and (5) of the foregoing six guidelines. The Council did not offer any evidence concerning whether or not it had any capital, capital stock or shareholders, and I therefore conclude that it failed to establish that it met guideline (2) of said guidelines. During 1993, the Council's funds were derived from rental payments, dues, interest and fund raisers, and not from public and private charity. Consequently, I conclude that the Council failed to meet guideline (3). Finally, I conclude, that the Council failed to establish that it used this parcel and the building thereon for charitable purposes, during the period March 18, 1993, through December 31, 1993 and therefore fails to meet guideline (6).

Since the Council has been determined to be a social and a fraternal organization and not primarily a charitable organization, and since the language in the last paragraph of 35 **ILCS** 205/19.7 clearly requires that the organization using the property, in this case the Council, be a charitable organization this parcel does not qualify for exemption, whether the applicant qualifies for exemption pursuant to Section 501(c)(2) or not.

The portion of the lower level of the building on this parcel leased to the Y's Buys thrift shop does not qualify for exemption pursuant to the following portion of 35 **ILCS** 205/19.7 because this parcel and the building thereon is owned by the applicant and not the YWCA.

For purposes of this Section, beginning with assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income derived therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of such property.

I therefore conclude that Cook County Parcel No. 06-13-302-012 should remain on the tax rolls during the period March 18, 1993, through December 31,

1993, the period during which the applicant owned this parcel during the 1993 assessment year.

I consequently recommend that Cook County Parcel No. 06-13-302-012 remain on the tax roll for 79 percent of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 26, 1996